

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Applications of)	
)	
MOBILE RADIO SERVICE, INC.)	FCC File Nos. 0000297937 and 0000297947
)	
Petition for Reconsideration of Grant of License of)	
Conventional Industrial/Business Pool Stations)	
WPSE246 and WPSE248, Los Angeles, California)	

ORDER ON RECONSIDERATION

Adopted: January 22, 2002

Released: January 24, 2002

By the Chief, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. *Introduction.* On August 27, 2001 Mobile Relay Associates (MRA) requested reconsideration of the grant of licenses for Conventional Industrial Business (I/B) Pool Stations WPSE246 and WPSE248 to Mobile Radio Service, Inc. (MRSI).¹ For the reasons stated below, we dismiss the petition.

2. *Background.* Between 1996 and 2001, the Commission authorized MRA to operate Conventional I/B Pool Stations WIL252,² WII345,³ WPSR337,⁴ WSD94,⁵ and WIJ226⁶ in the 470-512 MHz band and in the Los Angeles area. On March 26, 2001 the Commission authorized MRSI to operate Stations WPSE246 and WPSE248 in the 470-512 MHz band in the Los Angeles, California area.⁷

3. On August 27, 2001, MRA filed a petition seeking reconsideration of the license grants of Stations WPSE246 and WPSE248. MRA contends that MRSI's operations will cause harmful interference to Stations WIL252, WII345, WPSR337, WSD94, and WIJ226 and stations authorized to

¹ Petition for Reconsideration filed by Mobile Relay Associates (filed Aug. 27, 2001) (Petition).

² FCC File No. 9611R174741 (filed Nov. 20, 1996). Station WIL252 is authorized to operate on frequencies 508.0875 MHz and 511.0875 MHz.

³ FCC File No. 0000440491 (filed Apr. 26, 2001). WII345 is authorized to operate on frequencies 507.6875 MHz and 510.6875 MHz.

⁴ FCC File No. 0000400166 (filed Mar. 13, 2001). Station WPSR337 is authorized to operate on frequencies 508.1125 MHz and 511.1125 MHz.

⁵ FCC File No. 0000531997 (filed Jul. 23, 2001). Station WSD94 is authorized to operate on frequencies 507.9125 MHz and 510.9125 MHz.

⁶ FCC File No. 0000562462 (filed Aug. 16 2001). Station WIJ226 is authorized to operate on frequencies 508.0625 MHz and 511.0625 MHz.

⁷ FCC File Nos. 0000297937 (WPSE246) (filed Nov. 20, 2000) and 0000297947 (WPSE248) (filed Nov. 20, 2000). WPSE246 was licensed to operate on frequencies 507.8000 MHz, 507.8250 MHz, 507.9250 MHz, 507.9500 MHz, and 508.0500 MHz. WPSE248 was licensed to operate on frequencies 507.3500 MHz, 507.3750 MHz, 507.4250 MHz, 507.5000 MHz, 507.5750 MHz, 507.6000 MHz, 507.6500 MHz, 507.8500 MHz, 508.0750 MHz, 508.1000 MHz, and 508.8250 MHz.

other licensees.⁸ MRA alleges that MRSI exceeded the channel-loading requirements of Section 90.313 of the Commission's Rules⁹ and that MRSI failed to obtain the signed consent of MRA and all co-channel licensees for the proposed loading increase.¹⁰ MRA contends that because MRSI's frequencies are only 12.5 kHz removed from those of MRA and other licensees and MRSI's facilities are located within such close vicinity to such facilities, that there is significant overlap of the frequencies such that MRSI "can be deemed to be co-channelled to MRA and the other licensees."¹¹ MRA further submits that the frequency coordinator used by MRSI, American Automobile Association (AAA), erred in certifying MRSI's applications to the Commission, and the Commission erred in granting the subject license applications.¹² Therefore, MRA contends the captioned licenses must be rescinded and the applications denied.¹³

4. MRA also contends that its Petition is timely filed pursuant to Section 1.4(b) of the Commission's Rules.¹⁴ In this connection MRA argues that because the license grants did not appear on public notice, under Section 1.4(b) of the Commission's Rules, MRA's time for seeking reconsideration of the grants did not start until MRA received actual notice of the grants of the applications.¹⁵ In a footnote, MRA contends that under Section 1.4(b), sending the licenses to MRSI would trigger the time deadlines as to MRSI, but it would not trigger any deadlines as to anyone else, such as MRA.¹⁶ To construe Section 1.4(b) any differently, MRA argues, would violate MRA's right to procedural due process, and render Section 405 of the Communications Act of 1934, as amended,¹⁷ and Sections 1.4(b) and 1.106¹⁸ of the Rules unconstitutional as applied to MRA.¹⁹ MRA contends that the Commission is obligated to construe its rules in a manner to make them compatible with the U.S. Constitution, including the Fifth Amendment.²⁰ On September 17, 2001, the Commission received MRSI's Opposition to MRA's Petition.²¹ On September 20, 2001, MRA filed a Reply to Opposition.²²

⁸ Petition at Exhibit A.

⁹ Petition at 2 *citing* 47 C.F.R. § 90.313(a)(2), which limits maximum channel-loading on 470-512 MHz I/B Pool frequencies to 90 units.

¹⁰ *Id.* at 2 and Exhibit A. If a frequency is a shared channel, the loading standards can be exceeded upon submission of a signed statement by all licensees sharing the channel stating that they agree to the increase. *See* 47 C.F.R. § 90.313(b).

¹¹ Petition at 2 n.2.

¹² *Id.* at 2-3.

¹³ *Id.*

¹⁴ *Id.* at 1 *citing* 47 C.F.R. § 1.4(b).

¹⁵ *Id.* at 1.

¹⁶ *Id.* at 1 n.1.

¹⁷ *Id. citing* 47 U.S.C. § 405.

¹⁸ *Id. citing* 47 C.F.R. § 1.106.

¹⁹ *Id.*

²⁰ *Id. citing* U.S. CONST. amend. V.

²¹ "Opposition to Petition for Reconsideration filed by Mobile Relay Associates" filed by Mobile Radio Service, Inc. (filed Sept. 17, 2001) (Opposition). Section 1.106 requires that oppositions to reconsideration petitions be filed within ten days after the petition is filed. *See* 47 C.F.R. §§ 1.106(g); 1.45(b). MRSI filed its Opposition on September 17, 2001, twenty-one days after MRA's Petition was filed. MRSI indicates that MRA has no objection to a five-day extension of time. Opposition at 3. We dismiss the Opposition because MRSI has not shown good cause for its late filing. "It is the policy of the Commission that extensions of time shall not be routinely granted." 47 C.F.R. § 1.46(a). In this case, MRSI has failed to provide any explanation as to why it failed to file a timely opposition. Moreover, MRSI also failed to notify Commission staff that it was seeking an extension of time to file (continued....)

5. *Discussion.* Section 405 of the Communications Act of 1934, as amended, sets forth the requirements that a petitioner must satisfy before we may consider the petitioner's pleadings on reconsideration.²³ Section 405, as implemented by Section 1.106(f) of the Commission's Rules, requires that a petition for reconsideration be filed within thirty days from the date of public notice of the Commission's action.²⁴ The date of public notice is determined in accordance with Section 1.4 of the Commission's Rules.²⁵

6. In this case, the date of public notice of the Commission's action is March 26, 2001, the date appearing on the licenses sent "to persons affected by the action," because the license grants to MRSI were not published in the Federal Register, released, or placed on public notice.²⁶ We note that while the pertinent rule speaks of the date appearing on the document sent "to persons affected by the action," MRA is not a "person affected by the action" because it was not a party to the application proceeding.²⁷ The plain language of the rule provides that the "public notice" date is established by the date on the document, as opposed to the date of actual notice. While MRA argues that this result would contradict the Communications Act, the Commission's Rules and the U.S. Constitution, MRA cites no precedent supporting its position. Indeed, the United States Court of Appeals for the District of Columbia Circuit has rejected the argument that the filing period runs from the date of personal notice.²⁸ Thus, the last day for filing a timely petition for reconsideration was April 26, 2001. The Commission received the Petition on August 27, 2001, four months past the filing deadline. The filing requirement of Section 405(a) of the Act applies even if the petition for reconsideration is filed only one day late.²⁹ Consequently, we conclude that MRA's Petition should be dismissed as untimely filed.³⁰

7. Accordingly, IT IS ORDERED, that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the petition for reconsideration filed by Mobile Relay Associates, on August 27, 2001 IS DISMISSED.³¹

(...continued from previous page)

its opposition. 47 C.F.R. § 1.46(c). Since we are dismissing the Opposition, we will also dismiss the "Reply to Opposition to Petition for Reconsideration" filed by MRA on September 20, 2001.

²² "Reply to Opposition to Petition for Reconsideration" filed by Mobile Relay Associates (filed Sept. 20, 2001).

²³ 47 U.S.C. § 405(a).

²⁴ 47 C.F.R. § 1.106(f).

²⁵ 47 C.F.R. § 1.4.

²⁶ See 47 C.F.R. § 1.4(b)(5).

²⁷ See e.g. *Jonach Electronics, Order*, 15 FCC Rcd 24825, 24826 ¶ 4 (WTB PSPWD 2001) *aff'd.*, *Order on Further Reconsideration*, 16 FCC Rcd 13094, 13097 ¶ 8 (WTB PSPWD 2001) (Section 1.4(b)(5) of the Commission's Rules does not entitle non-parties to licensing proceedings to notice of licensing actions).

²⁸ *Gardner v. FCC*, 530 F.2d 1086, 1091 (D.C. Cir. 1976).

²⁹ See, e.g., *Panola Broadcasting Co., Memorandum Opinion and Order*, 68 FCC 2d 533 (1978); *Metromedia, Inc., Memorandum Opinion and Order*, 56 FCC 2d 909, 909-10 (1975); *In the Matter of Memorandum of Agreement Between the Federal Communications Commission; and Elkins Institute, Inc., Order on Reconsideration*, 14 FCC Rcd 5080, 5081 ¶ 3 (WTB 1999).

³⁰ See *Reuters Ltd. v. FCC*, 781 F.2d 946, 951-52 (D.C. Cir. 1986). See also *Petition for the Amendment of Commission Rules to Establish First and Second Class Radiotelephone Operator Licenses, Order*, 10 FCC Rcd 3196 (1995).

³¹ While we are dismissing the petition for reconsideration, our action is without prejudice to the right of the Branch to independently investigate this matter and take any appropriate action.

8. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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